IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2240 OF 2005

Venkateshrao Anantrao Javalkar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri C.K. Pendse for the Petitioner.
Ms Rajeshree Gadhvi, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 03, 2005.

P.C.:

1. Heard the Counsel appearing for the parties. The challenge in this Petition is to the order of externment passed against the Petitioner under section 56(1)(a)(b) of the Bombay Police Act, 1951.

2. The learned Counsel for the Petitioner submitted that the order of externment is vitiated as reliance is placed in the order on an extraneous material which does not form part of the show cause notice. He pointed out that the said extraneous material is F.I.R. registered at the instance of the Petitioner on 17th February, 2005. He submitted that the show cause notice does not disclose the period for which the Petitioner was proposed to be externed. He submitted that the show cause notice is excessive in as much as same extends to Raigad district whereas the activites of the Applicant are confined to area falling within the jurisdiction of Pant Nagar Police

Station, Mumbai. The learned A.P.P. opposed the Petition by pointing out that though there may not be any specific reference to F.I.R. registered on 17th February, 2005 at the instance of the Petitioner, in the show cause notice, there is reference to various activities of the Petitioner including extortion. The learned A.P.P. submitted that the order will not be vitiated only on the ground that period of externment is not mentioned in the show cause notice. The learned A.P.P. submitted that district Raigad is easily accessible to the city of Mumbai by various modes of conveyance and therefore, the order cannot be said to be excessive.

3. I have considered the submissions. In the order of externment dated 24th May, 2005, allegation is made that on 17th February, 2005 the Petitioner by pressuring the Government Machinery got an offence registered under sections 279, 337 and 427 of the Indian Penal Code. It is stated that the complaint was found to be false and accordingly a report was submitted by the police seeking "B" Summary. The allegation made in the order is that by filing false complaints, the Petitioner is indulging in extortion. Perusal of the show cause notice shows that the allegation regarding filing false complaint on 17th

February, 2005 does not form part of the show cause notice. The order of externment affects liberty of the Petitioner. Therefore, strict compliance with the principles of natural justice was contemplated. As there was no reference to the F.I.R. dated 17th February, 2005 in the show cause notice, there was no opportunity for the Petitioner to meet the allegation regarding filing of the false complaint by him. Thus, there is a voilation of principles of natural justice. The impugned order deserves to be quashed and set aside only on this ground and therefore, it is not necessary to refer to other challenges to the order made by the Petitioner.

4. Before parting with the judgment, it will be necessary to refer to the judgment of the Appellate Authority. In the judgment of the Appellate Authority, reliance is placed on the F.I.R. registered against the Petitioner on 29th March, 2005. It is obvious that the said F.I.R. is registered after show cause notice was issued. In my view, the order of externment could not have been confirmed by referring to extraneous material.

5. In the result, the Petition must succeed. Rule is made absolute in terms of prayer clause ‘a’.

JUDGE